Supreme Court of the United States

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, *Petitioner*,

vs.

BENJAMIN F. JONES, GEORGE M. LAUGHLINS, HENRY A. LAUGHLINS, Jr., BENJAMIN F. JONES, Jr., DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF JONES & LAUGHLINS, LIMITED, AND OTHERS, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

D. F. PUGH AND
J. E. SATER,
Attorneys for Petitioners.

COLUMBUS:
PRESS OF SPARE & GLENN,
1909.

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vs.

BENJAMIN F. JONES, GEORGE M. LAUGHLINS, HENRY A. LAUGHLINS, JR., BENJAMIN F. JONES, JR., DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF JONES & LAUGHLINS, LIMITED, AND OTHERS, *Respondents*.

Petition for writ of Certiorari requiring the Circuit Court of Appeals for the Sixth Circuit, to certify to the Supreme Court for its review and determination the cases of Benjamin F. Jones, George M. Laughlins, Henry A. Laughlins, Jr., Benjamin F. Jones, Jr., doing business under the firm name and style of Jones & Laughlins, Limited, having their principal office and place of transacting business in the City of Pittsburg, in the State of Pennsylvania, and others, Appellants, against The Great Southern Fire Proof Hotel Company, a corporation, et al., Appellees.

To the Honorable Supreme Court of the United States:

The petition of The Great Southern Fire Proof Hotel Company respectfully shows to this Honorable Court as follows:

I.

Your petitioner is a corporation duly incorporated under the laws of the State of Ohio, and now is, and has ever been, since the date of its incorporation, a citizen of said State and of no other, having its residence and principal place of business in the City of Columbus in said State; that

the respondents (appellants below), Benjamin F. Jones, George M. Laughlins, Henry A. Laughlins, Jr., and Benjamin F. Jones, Jr., above named, are members of a limited partnership association, doing business under the firm name and style of Jones & Laughlins, Limited, which association was organized under the act of the General Assembly of Pennsylvania, approved June 23, 1874, entitled, "An Act authorizing the formation of a partnership association in which the capital subscribed shall alone be responsible for the debt of the association, except under certain circumstances," each and all of which members of said association have their office and place of business in the City of Pittsburg, in the State of Pennsylvania, and said limited partnership, or association, and the members thereof, are and for many years past have been, citizens of said State and of no other, residing in the City of Pittsburg, in said State of Pennsylvania.

That the respondents (appellants above), Joseph S. Sosman and Perry Landis, are partners doing business under the firm name and style of Sosman & Landis, having their principal place of business in the City of Chicago and State of Illinois, and are now and for many years past have been residents of said City and State, and of no other.

II.

Your petitioner, on the 10th day of October, 1894, made and entered into a contract in writing with one William J. McClain, as principal contractor, wherein and whereby the said William J. McClain, in consideration of the sum of three hundred and forty-five thousand dollars ($345,000), covenanted and agreed with your petitioner, that he would, at his own cost and expense, in a first-class, good

and workmanlike manner, and with first-class materials, and to the satisfaction and acceptance of your petitioner, do and perform all the proper and necessary work and labor, and provide and furnish all proper and necessary materials, machinery, apparatus, and tools for, and would construct and complete and make tenantable for your petitioner, a fire proof hotel and opera house building, in full and strict conformity with said contract and with the plans and specifications made a part thereof, and thereupon the said William J. McClain did forthwith proceed towards the construction of said improvement on your petitioner's real estate, which real estate is situate in the City of Columbus, Franklin County, Ohio, and is bounded and described as follows, to-wit: In-lots Nos. three hundred and fifty-two (352), three hundred and fifty-three (353), and three hundred and fifty-four (354), in said City, being one hundred and eighty-seven and one-half feet (187½ ft.) square, and bounded on the north by Main street, on the east by Pearl street, on the south by Noble street, and on the west by High street, in said City.

III.

Your petitioner further says, that on or about the 13th day of December, 1894, the said Jones & Laughlins, Limited, made and entered into a contract in writing with the said William J. McClain, who was the principal contractor with your petitioner, for the erection and construction of the aforesaid fire proof hotel and opera house building on the aforesaid premises, wherein and whereby it was provided that the said Jones & Laughlins, Limited, should furnish the said William J. McClain nine hundred (900) tons of structural steel for the said fire proof hotel and opera house

building, said structural steel to be fitted and ready for erection and to be furnished for the sum of thirty-two thousand five hundred and eight dollars ($32,508.00) f. o. b. cars, Columbus, Ohio, and further provided that if an additional quantity of steel be required more than the nine hundred tons named in said contract, that the said Jones & Laughlins, Limited, should furnish the same at the rate of $1.81 per hundred pounds delivered in said City of Columbus, or if a less amount be required than the said nine hundred tons, the said Jones & Laughlins, Limited, would allow a reduction from the contract price at the rate of $1.81 per hundred pounds for the difference between the amount shipped and the nine hundred tons above and in said contract mentioned; and said contract further provided that the said Jones & Laughlins, Limited, were to commence shipping said structural steel at once and that the order for the same should be completed before August 1st, 1895, and that the terms of payment for said structural steel so shipped should be cash to be paid on the 5th day of each month following shipment of said steel (page 10, printed record, Exhibit A).

IV.

Your petitioner further says, that in accordance with the terms of said written contract so made as aforesaid, between the said Jones & Laughlins, Limited, and the said William J. McClain, the said Jones & Laughlins, Limited, shipped and furnished to the said William J. McClain structural steel for said building alleged by the said Jones & Laughlins, Limited, to be of the value of forty-three thousand two hundred ninety-six and 74–100 dollars ($43,296.74), which structural steel was used by the said William J. McClain in and about the construction and erection of said fire proof hotel and

opera house building in the City of Columbus, and State of Ohio, and payments were made by the said William J. McClain to the said Jones & Laughlins, Limited, on account of the structural steel so furnished and shipped as aforesaid, in the sum of thirty-one thousand eight hundred eighty-six and 72–100 dollars ($31,886.72), leaving a balance as claimed by the said Jones & Laughlins, Limited, due to them from the said William J. McClain, of eleven thousand four hundred ten and .02–100 dollars ($11,410.02).

V.

On the 21st day of April, 1896, at 4 : 50 o'clock P. M., within four months after having furnished the last of said structural steel to the said William J. McClain, the said Jones & Laughlins, Limited, for the purpose of obtaining a mechanic's lien on the real estate, hotel building and opera house hereinbefore mentioned, and owned by your petitioner, duly filed with the Recorder of Franklin County, Ohio, an affidavit purporting to contain an itemized statement of the amount and value of the merchandise claimed to have been furnished by them under their contract with the said William J. McClain, with the credits thereon, and a copy of the said written contract between them and the said McClain, and also a description of the premises owned by your petitioner hereinbefore specifically described, and on which said fire proof hotel and opera house building were in process of erection, and caused said affidavit to be recorded in Book No. 9, pages 99, 100 and 101 of the Records of Liens of said Franklin County, Ohio, in which said affidavit the said Jones & Laughlins, Limited, claim that there was due them from the said William J. McClain on account of structural steel furnished by them to him, the said sum of eleven thousand,

four hundred ten and .02–100 dollars ($11,410.02), with interest from January 28th, 1896, and that they have a lien on the aforesaid premises of petitioner for said amount.

VI.

Your petitioner further says that on or about the 28th day of November, 1895, the said Sosman & Landis made and entered into a contract in writing with the said William J. McClain, the principal contractor with your petitioner, for the erection and construction of the aforesaid fire proof hotel and opera house building on the aforesaid premises ,wherein and whereby it was provided that the said Sosman & Landis should furnish and supply to the said William J. McClain certain described scenery, stage work, fixtures and properties to be used in and about the construction of said building, for the sum of $7,100, which said sum was to be paid in three installments as the work progressed and the materials were furnished, the whole work to be performed by the said Sosman & Landis and all the materials to be supplied by them, to be furnished on or before September 1st, 1895 (pp. 25 and 26 Printed Record). In accordance with the terms of said written contract so made as aforesaid between the said Sosman & Landis and the said William J. McClain, the said Sosman & Landis furnished all of the labor and material required by them to be furnished for their said contract, excepting to the amount of $600, and were paid by the said McClain the sum of $2,000, leaving, as claimed by the said Sosman & Landis the sum of $4,500 due them from the said McClain on their said contract with him.

On the 20th day of June, 1896, at 3:55 o'clock P. M., within four months after having furnished the last of said material and having performed said labor for the said McClain, the

said Sosman and Landis filed with the Recorder of Franklin County, Ohio, an affidavit containing an alleged itemized statement of the amount and value of said materials furnished and labor performed to and for the said McClain, with the credits thereon, together with a copy of their written contract with him for the performance of said labor and the furnishing of said material, alleging that said labor and material had been performed on and furnished for the construction of said hotel and opera house building, which affidavit is of record in Mechanic's Lien Book 9, pages 193 to 197, both inclusive, in the Recorder's office of Franklin County, Ohio, and in said affidavit claimed that the sum of $4,500, with interest from March 26, 1896, was due to them from the said William J. McClain.

VII.

Your petitioner further says that at the time of the making of the contract between your petitioner, and the said William J. McClain as principal contractor, for the construction and erection of said fire proof hotel and opera house building, and also at the time of the filing by the said Jones & Laughlins, Limited, and by the said Sosman & Landis, of their respective aforesaid affidavits to procure mechanic's liens on the aforesaid premises, hotel and opera house building, in the Recorder's office of Franklin County, Ohio, and at all intervening times between said dates the mechanic's lien law of Ohio was embodied in Section 3184 of the Revised Statutes of Ohio (91 Ohio Laws, p. 135), Section 3185, Revised Statutes of Ohio (Giauque, Bates, or Smith and Benedict's Edition), and Section 3185*a*, Revised Statutes of Ohio (91 Ohio Laws, 137), which said sections are as follows, to-wit:

"Sec. 3184. A person who performs labor, or furnishes machinery or material for constructing, altering or repairing a boat, vessel or other water craft, or for erecting, altering, repairing or removing a house, mill, manufactory, or any furnace or furnace material therein, or other building, appurtenance, fixture, bridge or other structure, or for the digging, drilling, plumbing, boring, operating, completing or repairing of any gas well, oil well, or any other well, or performs labor of any kind whatsoever, in altering, repairing or constructing any oil derrick, oil tank, oil or gas pipe line, or furnishes tile for the drainage of any lot or land by virtue of a contract with, or at the instance of the owner thereof or his agent, trustee, contractor, or sub-contractor, shall have a lien to secure the payment of the same upon such boat, vessel or other water craft, or upon such house, mill, manufactory or other buildings or appurtenance, fixture, bridge, or other structure, or upon such gas well, oil well or any other well, or upon such oil derrick, oil tank, oil or gas pipe line, and upon the material and machinery so furnished, and upon the interest, lease-hold or otherwise, of the owner in the lot or land on which the same may stand, or to which it may be removed."

"Sec. 3185. Such person in order to obtain such line, shall, within four months from the time of performing such labor, or furnishing such machinery or material, file with the Recorder of the County where the labor was performed, or the machinery or material furnished, an affidavit containing an itemized statement of the amount and value of such labor, machinery or material, and a description of any promissory note or notes given for such labor, machinery or material, or any part thereof, with all credits and off-sets thereon, a

copy of the contract, if it is in writing, a statement of the amount and times of payment to be made thereunder, and a description of the land on which the gas well, oil well, or other wells are situated, or the land on which the house, mill, manufactory, or other buildings, or appurtenance, fixture, bridge, or other structure may stand, or to which it may be removed; and the same shall be recorded in a separate book to be kept therefor, and shall operate as a lien from the date of the first item of the labor performed, or the machinery or material furnished upon or toward the property designated in the preceding section, and the interest of the owner in the lot or land on which the same may stand, or to which it may be removed, for six years from and after the date of the filing of such attested statement. If an action be brought to enforce such lien within that time the same shall continue in force until the final adjudication thereof; and there shall be no homestead or other exemption against any lien under the provisions of this chapter."

"Sec. 3185*a*. In all cases where the labor, material or machinery referred to in Sections 3184 and 3185, shall be furnished by any person other than the original contractor, with such owner or his agent or trustee, the lien shall not exceed the actual value of the labor, material or machinery so furnished, and the aggregate amount of liens for which the property may be held shall not, in the absence of fraud or collusion between the owner and original contractor, exceed the amount of the price agreed upon between the owner and original contractor for the performing of such labor and the furnishing of such material and machinery. Provided, if it shall be made to appear that the owner and contractor, for the purpose of defrauding sub-contractors,

material-men or laborers, fixed an unreasonably low price in the original contract for any work or materials for which a lien is given under section thirty-one hundred and eighty-four, the Court shall ascertain the difference between such fraudulent contract price and a fair and reasonable price therefor, and such sub-contractors, material-men and laborers, shall have a lien to the amount of such fair and reasonable price so ascertained."

VIII.

Your petitioner further says that on or about the 11th day of August, 1896, the said William J. McClain made and filed in the Probate Court of Franklin County, Ohio, a deed of assignment in trust for the benefit of his creditors, to one, F. Burt Milligan, and is insolvent and unable to pay the claim of the said Jones & Laughlins, Limited.

Your petitioner further says that on December 8th, 1896, the Supreme Court of Ohio, in the cases of *Palmer and Crawford* vs. *Tingle*, and of *Young* vs. *The Lyon Hardware Company*, 55 O. S., 423, held the mechanic's lien law of Ohio as embodied in the foregoing sections Nos. 3184, 3185 and 3185*a*, Revised Statutes of Ohio, to be unconstitutional for the following reasons, and in the following respects, to-wit:

"1. The inalienable right of enjoying liberty and acquiring property, guaranteed by the first section of the Bill of Rights of the Constitution, embraces the right to be free in the enjoyment of our faculties, subject only to such restraints as are necessary for the common welfare.

"2. Liberty to acquire property by contract, can be restrained by the General Assembly only so far as such restraint is for the common welfare and equal protec-

tion and benefit of the people, and such restraining statute must be of such a character that a Court may see that it is for such general welfare, protection and benefit. The judgment of the General Assembly in such cases is not conclusive.

"3. While a valid statute regulating contracts is, by its own force, read into, and made a part of such contracts, it is otherwise as to invalid statutes.

"4. The act of April 13th, 1894, 91 O. L., 135, in so far as it gives a lien on the property of the owner to sub-contractors, laborers, and those who furnish machinery, material or tile to the contractor, is unconstitutional and void. All to whom the contractor becomes indebted in the performance of his contract, are bound by the terms of the contract between him and the owner."

IX.

On the 9th day of January, 1897, the said Benjamin F. Jones, George M. Laughlins, Henry A. Laughlins, Jr., and Benjamin F. Jones, Jr., doing business under the firm name and style of Jones & Laughlins, Limited, filed their bill of complaint in the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio, in the Sixth Judicial Circuit, against the said The Great Southern Fire Proof Hotel Company, the said Sosman & Landis, and others, to enforce its alleged mechanic's lien on the real estate of the said The Great Southern Fire Proof Hotel Company, alleging among other things, the execution of the aforesaid contract between them, the said Jones & Laughlins, Limited, and the said William J. McClain, the furnishing of structural steel to the said McClain for the construction and erection of said hotel and opera house building;

that the said McClain was indebted to them for a balance in the sum of $11,410.02, with interest from January 28th, 1896; that the said McClain was insolvent; that they had filed their affidavit with the Recorder of Franklin County, Ohio, on April 21st, 1896, at 4:50 o'clock P. M., containing, as claimed by them, an itemized statement of the amount and value of materials furnished by them to the said McClain, and that said materials had been used in the construction of the said hotel and opera house building on plaintiff's premises hereinbefore specifically described; that said affidavit was filed within four months after having furnished the said structural steel to the said McClain; that the materials so furnished by them was used in the construction of said hotel and opera house building, and constituted a part of said improvement, and that by reason of the premises they had a valid and subsisting lien on said hotel and opera house building from the 17th day of April, 1895 (the date when they first commenced to furnish said structural steel,) for the sum of eleven thousand four hundred and ten and .02–100 dollars ($11,410.02), with interest from January 28th, 1896, and prayed that their said alleged claim against the said William J. McClain be declared a valid and subsisting lien on the premises of The Great Southern Fire Proof Hotel Company, by virtue of said proceedings; that the liens on said property be marshaled—all the lien-holders therein having been made parties to said bill of complaint; that said premises be sold, and that their said claim be satisfied from the proceeds of said sale, and that they have all such other and further relief as may seem proper, and prayed that a writ of subpœna be directed to the said The Great Southern Fire Proof Hotel Company, and the other defendants therein, commanding

them to appear before said Court and there to answer all and singular the matters aforesaid, and to stand to, abide by and perform all such other further orders and decrees as to said Court should seem meet and proper. (Pages 1 to 12, printed record.) Said Sosman & Landis were made respondents in said complaint.

On the 9th day of January, 1897, there was issued out of the Clerk's office of said Court, a subpœna directed to the Marshal of said district and against the said The Great Southern Fire Proof Hotel Company, summoning it to be and appear in the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio, in Columbus, on the first Monday of March following, to answer to said bill in chancery, and said Marshal, on the 18th day of January, 1897, returned said subpœna to the Clerk's office of the aforesaid Circuit Court reciting that he had served the same by handing a true copy thereof with all the indorsements thereon, to the Secretary, President and Vice President of the said The Great Southern Fire Proof Hotel Company, each personally (pages 12, 13, 15, 16, printed record).

Thereupon the solicitors of the said Hotel Company, on the first day of February, 1897, entered their appearance as such solicitors (page 17, printed record), and on the 24th day of February, 1897, in behalf of said Hotel Company, filed a demurrer to said bill of complaint for the reason and on the ground that the said Jones & Laughlins, Limited, had not in and by their said bill, made or stated such a cause as doth or ought to entitle them either to such recovery or relief as therein sought and prayed for from and against the said Hotel Company, and prayed the judgment of the said Circuit Court as to whether it should be compelled to make any answer to the said bill, or any of the matters and things

therein contained, and prayed to be hence dismissed with its reasonable costs therein sustained (pages 17 and 18, printed record).

The said cause was entitled and numbered in the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio in the Sixth Judicial Circuit, "Benjamin F. Jones, George M. Laughlins, Henry A. Laughlins, Jr., and Benjamin F. Jones, Jr., doing business under the firm name and style of Jones & Laughlins, Limited, having their principal office and place of transacting business in the City of Pittsburgh, and State of Pennsylvania, Complainants, vs. The Great Southern Fire Proof Hotel Company, a corporation, et al., Respondents.

X.

On the 6th day of March, A. D. 1897, the said Sosman & Landis filed in said Circuit Court of the United States for the Southern District, Eastern Division, their answer and cross-bill alleging that the said Joseph S. Sosman and Perry Landis were partners doing business under the firm name and style of Sosman & Landis, having their principal office and place of business in the City of Chicago and State of Illinois, and, after admitting substantially all of the allegations of the petition, alleged that on the 28th day of February, 1895, they made and entered into a written contract with the defendant William J. McClain, being the one hereinbefore referred to, to furnish certain scenery, stage work, fixtures and property to be used by the said McClain in and about the construction of said hotel and opera house and to perform all labor necessary in and about the placing and construction of said material in said building, the same to be furnished for the sum of $7,100, and to be paid for in

three equal installments as the work progressed as hereinbefore recited, the whole of said work to be done by September 1st, 1895; that they, the said Sosman & Landis, in pursuance of their said contract with the said McClain, did between the 28th day of February, 1895, and the 26th day of March, 1896, furnish material and perform labor under their said contract to and for the said McClain of the value of $7,100, and did receive from the said McClain on said contract, the sum of $2,000 and from said hotel company the snm of $600, and that there remained due to them the sum of $4,500 on said eontract, with interest from the 26th day of March, 1896; that on the 20th day of June, 1896, at 3:55 o'clock P. M., they filed an affidavit containing an itemized statement of the amount and value of said materials furnished and labor performed under said contract between them and the said McClain, with all credits thereon, together with a copy of the said written contract between them and the said McClain, and that said material was furnished and said labor performed in and about the construction of said hotel and opera house, which said affidavit also contained a description of the premises on which said building was erected and is of record in the Recorder's office of Franklin County, Ohio, in the book and on the pages hereinbefore mentioned. Said affidavit further recited that there was due and unpaid to them the sum of $4,500, with interest from the 26th day of March, 1896, and that said Sosman & Landis filed said affidavit in compliance with Section 3184 of the Revised Statutes of Ohio as amended April 13, 1894, and Section 3185 of said Revised Statutes, and by reason of the premises the said Sosman & Landis claim a valid and subsisting lien on said hotel and opera house building and the premises hereinbefore described on which the same were

erected, from the date when said labor was first commenced and said material furnished, with interest from the 26th day of March, 1896.

The said Sosman & Landis in their answer and cross-bill prayed that the liens on said property be marshaled; that all lien-holders thereon be made parties; that said premises be sold and their claims satisfied from the proceeds of said sale, and for all such other and further relief as may be proper, and further prayed that a writ of subpœna be directed to The Great Southern Fire Proof Hotel Company, commanding it to appear before said Court to answer to all and singular the matters aforesaid, to stand to and abide by and perform all such other further orders and decrees as to said Court should seem meet and proper (printed record, pp. 19 to 25, both inclusive).

On the 12th day of April, 1897, the solicitors of the said Hotel Company, in behalf of it, filed a demurrer to said answer and cross-bill of the said Sosman & Landis, for the reason and on the ground that the said Sosman & Landis had not in and by their said answer and cross-bill, made or stated such a cause as doth or ought to entitle them to any such recovery or relief as therein sought and prayed for from or against this defendant, and for divers and other good causes of demurrer appearing on said cross-bill, and prayed the judgment of the Court, whether it should be compelled to make answer to said answer and cross-bill, or any of the matters and things therein contained and prayed to be dismissed with its reasonable costs in its behalf sustained (p. 38, printed record).

XI.

The said case was heard and determined by the said Circuit Court on said demurrer, and such proceedings were had in said case in said Circuit Court, that on the 3d day of May, 1897, the said Court rendered a judgment therein, as follows:

"This day came the parties and thereupon this cause came on to be heard on the demurrer of the defendant, The Great Southern Fire-Proof Hotel Company, filed to the bill of complaint, and also upon the demurrer of the said The Great Southern Fire-Proof Hotel Company to the cross-bill of complaint of the defendants, Sosman & Landis, and was argued by counsel and submitted to the Court.

"On consideration whereof, and being fully advised in the premises, the Court doth find that said demurrers, and each thereof, are well taken and doth allow and sustain said demurrers and each thereof.

"It is therefore ordered and decreed that said demurrers, and each thereof, be, and they hereby are, allowed and sustained.

"And thereupon, the said complainant, not desiring to amend its said bill of complaint, and the said defendants, Sosman & Landis, not desiring to amend their said cross-bill, it is ordered, adjudged, and decreed that said bill of complaint and said cross-bill be, and the same are each hereby, dismissed as to the defendant, The Great Southern Fire-Proof Hotel Company, with costs to the defendant, The Great Southern Fire-Proof Hotel Company, to be taxed.

"To all of which rulings, judgments, orders and decrees the said complainants and the said defendants, Sosman & Landis, except and ask that their exceptions

in that behalf be noted by the Court, and hereby, in open Court, give notice of and pray an appeal from each and all of said rulings, judgments, orders and decrees.

"The appeal is granted and the amount of the bond is therefor fixed at $250.00." (Page 39, printed record.)

XII.

The said case in the said Circuit Court of the United States was heard before, and decided by the Honorable GEORGE R. SAGE, District Judge of the United States Court for the District of Ohio, sitting in the said Court, and the opinion of the Court was delivered by him, and thereafter published in the 79 Fed. Rep. 477. (Page 31, printed record.)

XIII.

On the same day said judgment was so rendered by said Circuit Court declaring said mechanic's lien law unconstitutional, an appeal from said judgment to the United States Circuit Court of Appeals for the Sixth Circuit, was duly allowed (pages 39, 40, printed record) and on the 29th day of May, 1897, the petition of appeal of the said Jones and Laughlins, Limited (page 40, printed record) and of said Sosman and Landis (pages 41, 42, printed record) from said order and decree to the United States Circuit Court of Appeals for the Sixth Circuit, with their assignment of errors, (pages 41, 42, printed record) were filed in the clerk's office of said Circuit Court praying that their respective bills be allowed and a transcript of the record, proceedings and papers upon which said order was made and decree rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Sixth District, and on June 10, 1897, said appeals were allowed and bonds therefor allowed (pages 43,

44, printed record,) and bonds given and filed (pages 44, 45, 46, printed record,) and it was ordered by said Circuit Court that all proceedings in said case, be forthwith transmitted to the said United States Circuit Court of Appeals for the Sixth Circuit.

XIV.

On the 3d day of August, 1897, a certified transcript of the record of all proceedings of said Circuit Court in the said case was filed in the United States Circuit Court of Appeals for the Sixth Circuit, and the said case was entered and docketed in said Court of Appeals entitled, "*Benjamin F. Jones, et al*, Appellants, vs. *The Great Southern Fire Proof Hotel Company*, Appellee, No. 535," and through inadvertence and mistake the appeal by said Sosman and Landis was docketed in said Circuit Court of Appeals as a separate and distinct case and designated as "*Sosman and Landis*, Appellants, vs. *The Great Southern Fire Proof Hotel Company*, Appellee, No. 536."

The assignment of errors filed on behalf of the said Jones and Laughlins, Limited, was as follows:—

First. The Court erred in sustaining the demurrer of the defendant, The Great Southern Fire Proof Hotel Company, to the bill of complaint.

Second. The Court erred in rendering judgment in favor of the defendant, The Great Southern Fire Proof Hotel Company, and against these complainants.

Third. Judgment should have been rendered in favor of these complainants and against said defendants.

Fourth. The Court erred in holding the Sections of the Mechanic's Lien Law of Ohio, under which complainants seek to enforce the lien set out in their bill, to be unconstitutional, (page 41, printed record.)

The assignment of errors filed in behalf of Sosman and Landis was as follows:—

First. The Court erred in sustaining the demurrer of the defendant, The Great Southern Fire Proof Hotel Company, to the cross-bill of complaint filed by these defendants, Sosman and Landis.

Second. The Court erred in rendering judgment in favor of the defendant, The Great Southern Fire Proof Hotel Company, and against these defendants, Sosman and Landis.

Third. Judgment should have been rendered in favor of these defendants, Sosman and Landis, and against said defendant, The Great Southern Fire Proof Hotel Company.

Fourth. The Court erred in holding the Sections of the Mechanic's Lien Law of Ohio, under which these defendants sought to enforce the lien set out in their cross-bill, to be unconstitutional. (Pages 42 and 43, printed record.)

XV.

The case came on to be heard on the appeal of said Benjamin F. Jones *et al.*, in the said Circuit Court of Appeals, on the 15th day of December, 1897, before the Honorable WILLIAM H. TAFT, HORACE H. LUPTON and ——— CLARK, and on the 16th day of April, 1898, the said Court rendered a judgment reversing the said judgment of the said Circuit Court therein, the judgment of said Circuit Court of Appeals being as follows:

> "This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Ohio, and was argued by counsel.
>
> "On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of

the said Circuit Court in this cause be, and the same is hereby reversed with costs, and the cause is remanded to the Court whence it came, with directions to overrule the demurrer and require the defendants to answer."

The case came on to be heard on the appeal of said Sosman & Landis in said Circuit Court of Appeals, on the 15th day of December, 1897, before the Honorable WILLIAM H. TAFT, HORACE H. LUPTON and ——— CLARK, and on the 16th day of April, 1898, the said Court rendered a judgment reversing the said judgment of the Circuit Court therein, the judgment of said Circuit Court being as follows:

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Ohio, and was argued by counsel.

"On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby reversed with costs, and the cause is remanded to the Court whence it came, with directions to overrule the demurrer and require the defendant to answer."

XVI.

A certified copy of the entire record of the said case in the said Circuit Court of Appeals is furnished and filed herewith, in conformity with Rule 37 of this Honorable Court, relative to cases from Circuit Court of Appeals.

XVII.

Your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals in the said case is erroneous, and that this Honorable Court

should require the said case to be certified to for its review and determination under and in conformity with the provisions of the Sixth Section of the Act of Congress entitled, "An Act to establish Circuit Court of Appeals, and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, the said case being made final in the said Circuit Court of Appeals by the said Act.

The judgment of said Circuit Court of Appeals is erroneous in that said mechanic's lien law was held to be constitutional and said judgment was rendered in favor of the said Jones & Laughlins, Limited, whereas said law should have been held unconstitutional and said judgment should have been rendered in favor of your petitioner, for the following reasons, and on the following grounds, to-wit:

(*a*) The said mechanic's lien law of Ohio is unconstitutional in that it denies to the owner of real estate the right of acquiring, possessing and protecting property, and the right of contract, in relation thereto, of making and enforcing contracts, of fixing and limiting the consideration therefor, and the manner and time of payment, and is not for the equal protection and benefit of the people, and therefore contravenes Sections 1 and 2 of the Bill of Rights (Art. 1, Constitution of Ohio), which sections are as follows:

> "Sec. 1. All men are, by nature, free and independent and have certain alienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety.
>
> "Sec. 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit," etc.

(*b.*) It impairs the obligations of contracts and is in conflict with that part of Sec. 28, Art. 2, of the Constitution of Ohio, which provides that "The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts"; and also with Sec. 10, Art. 1, Constitution of the United States, which contains a similar provision.

(*c.*) It deprives the real estate owner of his property without due process of law, and of the equal protection of the laws, abridges the privilege of citizens of the United States as regards the right of contract, and is therefore unconstitutional, and in conflict with Sec. 1, Art. XIV., of the Constitution of the United States, which recites: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(*d.*) The Circuit Court of Appeals should have followed the decision of the Supreme Court of Ohio, holding said law unconstitutional, because there was not presented to said Circuit Court any question as to negotiable paper, municipal bonds, general commercial law, or general jurisprudence, or any matter of interstate transportation and commerce, or any question other than the constitutionality of a law of the State of Ohio having no extra-territorial effect.

(*e.*) The said Circuit Court of Appeals should have followed the decision of the Supreme Court of Ohio holding said law unconstitutional, for the reason that the Supreme Court of Ohio has at all times recognized and enforced the doctrine that the rights of material-men and sub-contractors are limited and defined by and dependent upon the contract

between the owner and the original contractor, and are to be worked out through it (*Copeland* vs. *Manton*, 22 O. S., 398; *Dunn* vs. *Rankin*, 27 O. S., 132; *Palmer & Crawford* vs. *Tingle*, 9 O. C. C., 708; *Stark* vs. *Slemmons*, 54 O. S., 435; *Palmer & Crawford* vs. *Tingle*, and *Young* vs. *Lyon Hardware Co.*, 55 O. S., 423; *Hampson* vs. *The State*, 9 O., 318, 319), which construction of the mechanic's lien law of Ohio obtained at the time the said Jones & Laughlins, Limited, and said Sosman & Landis contracted with McClain, and at the time the said McClain contracted with your petitioner, nor has there at any time been a change made by the Supreme Court of Ohio in judicial construction as to the mechanic's lien law, or laws of said State; and during the time within which the said Jones & Laughlins, Limited, and said Sosman & Landis, were furnishing labor and material to the said William J. McClain, to be used in said hotel and opera house building; the said case of *Palmer & Crawford* vs. *Tingle*, and *Young* vs. *The Lyon Hardware Company*, in which the constitutionality of the said mechanic's lien law was called in question, was pending in the Courts of Ohio, and the decision rendered therein by the Circuit Court of Putnam County, Ohio (9 O. C. C., 708), was made at the November term of said Court in 1895, and the said Jones & Laughlins, Limited, and said Sosman & Landis, were apprised of the fact that the constitutionality of said law was questioned. The decision of the said Circuit Court of Appeals is in conflict with the decision of the Supreme Court of Ohio, and the doctrine relating to the mechanic's lien law which had uniformly been recognized by said Supreme Court in said State.

The importance and gravity of the questions raised and presented by the petitioner's demurrer to the bill and the

aforesaid answer and cross-bill will be recognized when it is stated that under the provisions of said mechanic's lien law a lien is given to the material-men and sub-contractor without notice to the owner, at any time within four months from the completion of the improvement on the owner's real estate or the furnishing of labor or material, and in any amount not in excess of the original contract price between the owner and such principal contractor, regardless of the state of the account between the owner and such principal contractor, and thus the owner may be compelled to pay for his improvement in whole or in part a second time, and to a person with whom he sustains no contractual relations, although the owner may have acted in strict compliance with his contract, paid in advance, or as his improvement progressed; that such law has no application to any or all kinds of contracts but is limited in its operation to a special class of contracts, viz.: To persons who labor or furnish materials for the objects named in the act and thus discriminates in favor of a special class of citizens to the exclusion of all others; that such law places upon the owner of real estate a burden that is not borne by the owner of any other class of property; that such law denies to the owner of real estate, the right to enjoy and possess property and contract in relation thereto as he may deem best; that such law denies to the owner of real estate the right to contract with reference to his property other than upon a monied consideration, and deprives him of the right of fixing the amount, or medium of payment for improvements made on his property, in that he may be compelled to pay a second time, as aforesaid, and may be compelled to pay in money, although he may have contracted to pay in some other commodity; that such law makes the owner of real estate, by force of legislation secur-

ity for the original contractor that such original contractor will perform his contract and thus defeats the owner in the enjoyment of his property; that such law divests the owner of his title without any act, tort or default on his part, and thus deprives him of the equal protection of the laws and of his property without due process of law; that such law tends to drive small and insolvent contractors out of business, and leaves the contract business in the hands of those who are rich enough to guarantee their contracts; that such law compels the owner of property to pay any claim or claims up to the full extent of twice the contract price, and gives him no recourse except an action by damages against the original contractor.

XVIII.

Your petitioner is advised and believes that the judgment so rendered by the Circuit Court of Appeals is not in harmony with the decision announced by this Honorable Court in *Gulf, Colorado & Sante Fe R. R. Co.* v. *Ellis*, 165 U. S., 150, in that said mechanic's lien law deprives owners of their property without due process of law, and of the equal protection of the law, and makes a classification that is not based on any reasonable ground and makes a mere arbitrary selection of one class of citizens to the exclusion of all others.

This Honorable Court, in the decision announced in *Gulf, Colorado & Sante Fe R. R. Co.* vs. *Ellis*, promulgated the same doctrine as is announced in *Coal Co.* vs. *Rosser*, 53 O. S., 12, *State* vs. *Ferris*, 53 O. S., 314, and *Young* vs. *The Lyon Hardware Company*, 55 O. S., 423, and relied largely on the same authorities as were cited by the Supreme Court of Ohio to sustain its decision in said cases of *Coal Co.* vs. *Rosser*, and *Young* vs. *The Lyon Hardware Co.*

XIX.

Your petitioner thus respectfully submits that the questions upon the legal and just construction and effect of the said mechanic's lien law of Ohio, involved in and presented by the said demurrer and case of your petitioner, should be authoritatively and finally adjudged by this Honorable Court, upon and after a full presentation to the Court of the merits of said questions on the part of the petitioner and the said Jones & Laughlins, Limited, and further represent that this petition is not interposed for delay.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court on a day to be therein designated, a full and complete transcript of the record and of all proceedings of said Circuit Court of Appeals in said case therein, entitled, Benjamin F. Jones, George M. Laughlins, Henry A. Laughlins, Jr., and Benjamin F. Jones, Jr., doing business under the firm name and style of Jones & Laughlins, Limited, having their principal office and place of transacting business in the City of Pittsburg, in the State of Pennsylvania, Appellants, vs. The Great Southern Fire Proof Hotel Company, Appellee, Number 535; and the case therein entitled *Sosman & Landis, Appellants* vs. *The Great Southern Fire Proof Hotel Co., Appellee*, No. 536, and incorrectly docketed as a separate suit as aforesaid; that said cases may be reviewed and determined by this Court as provided in section six of an Act of Congress, entitled, "An Act to establish Circuit Court of Appeals, and to define and regulate in certain cases the jurisdiction of the Courts of

the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem proper, and in conformity with the said act, and that the said judgment of the Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court. And your petitioner will ever pray, &c.

J. E. SATER AND
D. F. PUGH,
J. C. Richards
Attorneys and Counselors for Petitioner.

State of Ohio, Franklin County, ss.:

J. E. Sater, being first duly sworn, says that he is one of the attorneys, and of counsel for The Great Southern Fire-Proof Hotel Company, the petitioner above named, and as such had personal charge for it of the case in the foregoing petition mentioned, in the Circuit Court of the United States for the Eastern Division of the Southern District of Ohio, and in the United States Circuit Court of Appeals for the Sixth Circuit, and that he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

J. E. SATER.

Sworn to before me and subscribed in my presence this 24th day of January, A. D., 1899.

[SEAL.] L. F. SATER,
Notary Public in and for Franklin County, Ohio.

SUPREME COURT OF THE UNITED STATES.

The Great Southern Fire-Proof Hotel Company, *Petitioner*,

vs.

Benjamin F. Jones, George M. Laughlins, Henry A. Laughlins, Jr., Benjamin F. Jones, Jr., doing business under the firm name and style of Jones & Laughlins, Limited, and others, *Respondents*.

MOTION FOR AN ORDER THAT A WRIT OF CERTIORARI ISSUE.

The Great Southern Fire-Proof Hotel Company, the petitioner, in its petition herein, moves the Court for an order that this Court issue a writ of *certiorari* to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, directing that Court to certify to this Court a copy of the record of this cause in that Court, wherein said Jones & Laughlins, Limited, and others, are appellants, and the said The Great Southern Fire-Proof Hotel Company is appellee, which case is known on the dockets of said Court as Case No. 535 and 536.

J. E. SATER AND
D. F. PUGH,
Attorneys for Petitioner.